

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

JONATHAN RIVERA-PIEROLA,)	
)	
Plaintiff,)	
v.)	Civil Action No.: 5:21-cv-616-PRW
)	
BOARD OF REGENTS FOR THE)	
OKLAHOMA AGRICULTURAL AND)	
MECHANICAL COLLEGES, ACTING)	
FOR AND ON BEHALF OF OKLAHOMA)	
STATE UNIVERSITY,)	
)	
Defendant.)	

JOINT MOTION FOR DISMISSAL WITHOUT PREJUDICE

COME NOW the Parties, Plaintiff, Jonathan Rivera-Pierola (“Plaintiff”), and Defendants, the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges (“Defendant” and together with Plaintiff, collectively, the “Parties”), pursuant to LCvR 7.1, hereby respectfully and jointly request the above captioned lawsuit be dismissed without prejudice. In support of this Motion for Dismissal Without Prejudice, the Parties show the Court as follows:

1. The Parties recently became aware of the existence of a serious question regarding whether this Court has jurisdiction to hear this case, as subject matter jurisdiction in this matter hinges solely on the question of diversity of citizenship. *See* Complaint, Dkt. No. 1 at ¶ 7; *Dougherty v. Univ. of Okla. Bd. of Regents*, 415 Fed. App’x 23 (10th Cir. 2011).

2. Defendant, for purposes of diversity jurisdiction, believe they are not a citizen of the state of Oklahoma. *Dougherty*, 415 Fed. App'x 23 (10th Cir. 2011). Plaintiff does not believe an argument to the contrary is likely to be successful.

3. Subject matter jurisdiction cannot be waived; therefore, the Parties cannot correct this potential error by means of a waiver. *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1999).

4. Currently, the case is scheduled for Docket Call at 1:30 p.m. on February 7, 2024. *See* February 2024 Civil Trial Docket, Dkt. No. 51.

5. Additionally, Defendant's Motion for Summary Judgment filed on June 29, 2023, remains pending before the Court. Defendant's Motion for Summary Judgment, Dkt. No. 34.

6. The Parties believe the most prudent and practical approach, despite their mutual desire to get the lawsuit tried as expeditiously as possible, is for the case to be dismissed without prejudice and for Plaintiff to refile it in Payne County Oklahoma District Court, as soon as reasonably possible.

7. In filing this Joint Motion for Dismissal Without Prejudice the Parties agree that when Plaintiff refiles the case in Payne County Oklahoma District Court, Defendant's pending Motion for Summary Judgment and the associated pleadings will be filed in state court in substantially the same form (any changes and/or amendments to said pleadings will be to address the change in venue) and no additional discovery will be conducted by either Party.

WHEREFORE for the above stated reasons, the Parties respectfully request the case be dismissed without prejudice and stricken from the February Call Docket. A proposed order is being contemporaneously submitted with this Motion for Dismissal.

Submitted this 2nd day of January, 2024.

Respectfully submitted,

/s/ Jason J. Bach

Jason J. Bach

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University*

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2024, I electronically transmitted the attached document to the Clerk of Court using the ECF system for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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